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U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:12-cv-01805-HRH
Internal Use Only

19 #s

Best Western International Incorporated v. Patel and
 Rao LLC et al
 Assigned to: Judge H Russel Holland
 Demand: \$32,000
 Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 08/23/2012
 Jury Demand: None
 Nature of Suit: 840 Property Rights:
 Trademark
 Jurisdiction: Federal Question

Plaintiff

**Best Western International
 Incorporated**
an Arizona non-profit corporation

represented by **Michelle Lynn Swann**
 Schneider & Onofry PC
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 Phoenix, AZ 85012-2658
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LEAD ATTORNEY
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Trademark
 677,103 2,116,079
 914,812 2,105,546
 914,813 2,140,332
 1,072,360 2,665,955
 1,074,360 2,869,617
 1,427,735 3,107,814
 1,432,431 3,080,655
 1,515,712 3,083,667
 1,900,620 3,020,526
 1,933,830

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V.

Defendant

Patel and Rao LLC
*a South Carolina limited liability
 company*

Defendant






Orangeburg Lodging LLC

a South Carolina limited liability company

Defendant

Hemalata Patel

a South Carolina resident

Date Filed	#	Docket Text
08/23/2012	 <u>1</u>	COMPLAINT. Filing fee received: \$350.00, receipt number PHX 0970-7151964, filed by Best Western International Incorporated (submitted by Michelle Swann). (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Civil Cover Sheet)(REK) (Entered: 08/23/2012)
08/23/2012	 <u>2</u>	SUMMONS Submitted by Best Western International Incorporated (submitted by Michelle Swann). (Attachments: # <u>1</u> Summons, # <u>2</u> Summons)(REK) (Entered: 08/23/2012)
08/23/2012	 <u>3</u>	Corporate Disclosure Statement by Best Western International Incorporated (submitted by Michelle Swann). (REK) (Entered: 08/23/2012)
08/23/2012	 <u>4</u>	Filing fee paid, receipt number PHX 0970-7151964. This case has been assigned to the Honorable H. Russel Holland. All future pleadings or documents should bear the correct case number: CV 12-01805-PHX-HRH. Notice of Availability of Magistrate Judge to Exercise Jurisdiction form attached. (REK) (Entered: 08/23/2012)
08/23/2012	 <u>5</u>	Summons Issued as to Orangeburg Lodging LLC, Hemalata Patel, Patel and Rao LLC. (Attachments: # <u>1</u> Summons, # <u>2</u> Summons)(REK). *** IMPORTANT: When printing the summons, select "Document and stamps" or "Document and comments" for the seal to appear on the document. (Entered: 08/23/2012)

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**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF ARIZONA**

Best Western International, Inc., an
Arizona non-profit corporation,

Plaintiff,

vs.

Patel and Rao, LLC, a South Carolina
limited liability company; Orangeburg
Lodging, LLC, a South Carolina limited
liability company; and Hemalata Patel, a
South Carolina resident,

Defendants.

No.

Verified Complaint

Plaintiff Best Western International, Inc. ("Best Western"), for its Verified
Complaint against Defendants Patel and Rao, LLC, a South Carolina limited liability
company, Orangeburg Lodging, LLC, a South Carolina limited liability company, and
Hemalata Patel, a South Carolina resident, alleges as follows:

NATURE OF THE ACTION

1. This is an action for unfair competition and trademark dilution in
violation of federal, state law and common law.

1 2. Defendants have also failed to pay amounts owing to Best Western on
2 an open and stated account, constituting a violation of common law and a breach of
3 contract, and Defendants were unjustly enriched.
4

5 **THE PARTIES, JURISDICTION, AND VENUE**

6 3. Plaintiff Best Western is a non-profit corporation organized under the
7 laws of the State of Arizona with its headquarters located in Phoenix, Arizona.
8

9 4. Defendant Orangeburg Lodging, LLC is a South Carolina limited
10 liability company with its place of business in Orangeburg, South Carolina and it executed
11 a Membership Application and Agreement with Best Western dated September 6, 2006
12 (the "Membership Agreement").
13

14 5. Defendant Patel and Rao, LLC is a South Carolina limited liability
15 company with its principal place of business in Orangeburg, South Carolina and, upon
16 information and belief, it purported to assume some or all of Defendant Orangeburg
17 Lodging, LLC's obligations under the Membership Agreement.
18

19 6. It is unclear whether, and when, Defendant Orangeburg Lodging, LLC
20 actually transferred its rights and obligations under the Membership to Patel and Rao,
21 LLC, and whether any alleged transfer was disclosed to and authorized by Best Western
22 and therefore each is named in its individual capacity and are collectively referred to here
23 as the "Corporate Defendant".
24

25 ///

26 ///

1 7. Defendant Hemalata Patel is believed to be a South Carolina resident
2 who was designated on November 9, 2007 as the Voting Member for the Best Western
3 membership.
4

5 8. Upon information and belief, Defendant Patel is a principle of
6 Defendant Patel and Rao, LLC and of a separate management company hired by the
7 Corporate Defendant to manage the operations of the relevant hotel.
8

9 9. This Court has jurisdiction over the Lanham Act claim set forth
10 below by virtue of 28 U.S.C. §§ 1331 and 1338(a), and over the other claims set forth
11 below by virtue of 28 U.S.C. §§ 1332, 1367 and/or 1338(b).
12

13 10. There are no matters pending between the parties in any other
14 jurisdiction regarding Defendants' Lanham Act violations.
15

16 11. Venue in this judicial district and the exercise of personal jurisdiction
17 over Defendants by this Court are proper pursuant to 28 U.S.C. § 1391(b) and (c) and
18 because, among other reasons: (1) Defendants executed a contract giving this Court
19 personal jurisdiction and venue over them; (2) Best Western is an Arizona non-profit
20 corporation with its principal place of business in Phoenix, and its witnesses are either
21 located in Phoenix or available in Phoenix; (3) Defendants' trademark violation impacts
22 the goodwill and reputation of Best Western and all of its members, resulting in a
23 significant, direct harm and effect on Best Western, an American corporation engaged in
24 commerce in the United States, Canada, and worldwide; (4) Defendants' continued use of
25 the Best Western Symbols, a business name representing quality and reputation that is sold
26

1 for use by others, wrongfully capitalizes on the goodwill and reputation of Best Western;
2 (5) if the Best Western name is diluted and the reputation tainted, all Best Western
3 members and customers are adversely impacted; (6) Defendants have caused events to
4 occur and injuries to result in the State of Arizona; and (7) Defendants aimed their conduct
5 at Best Western knowing that Best Western is located in Arizona, and harming Best
6 Western in Arizona. *See* Membership Application and Agreement, attached here as
7 Exhibit 1, Paragraphs 37-38.
8

9
10 **GENERAL ALLEGATIONS**

11 12. Best Western operates as a membership organization consisting of
12 individually owned and operated hotels (i.e., its members). The rights and obligations of
13 Best Western's members are determined by the membership and are set forth in the
14 Membership Agreement, Best Western's Bylaws & Articles (the "Bylaws"), Best
15 Western's Rules and Regulations (the "Rules and Regulations"), and other Best Western
16 "Regulatory Documents" as that term is defined in Best Western's Bylaws (collectively the
17 "Governing Documents").
18

19 13. Best Western provides its members with a worldwide reservation
20 system and worldwide marketing campaigns, as well as an option to participate in
21 collective purchasing of hotel equipment, furnishings, and supplies (the "Best Western
22 Services"). Best Western employs a large number of employees worldwide who are
23 dedicated to providing member hotels with the Best Western Services.
24
25
26

1 14. Each Best Western member is authorized to use the trade name,
2 trademarks, service marks, logos, and other intellectual property and similar identifying
3 symbols owned by Best Western (the "Best Western Symbols") in connection with its
4 hotel pursuant to a limited, non-exclusive license (the "Best Western License"), which is
5 set forth in the Membership Agreement. *See* Membership Agreement at ¶¶ 1, 19-26.

7 15. In exchange for receiving the Best Western Services and use of the
8 Best Western License, Best Western members are obligated to, among other things, pay
9 annual dues, membership fees, and other assessments. The membership fees are due
10 December 1 of each year and are billed in monthly installments over the course of the
11 following year to accommodate members. Annual dues are charged in August of each
12 year. All other dues, fees and assessments are billed monthly. Pursuant to Best Western
13 Bylaws Article II, Section 5 (B), if a member resigns or is terminated, fees and dues for the
14 remainder of the fiscal year will become immediately due and payable.

17 16. Best Western first adopted "Best Western" as its trade name in 1947.
18 Shortly thereafter, Best Western adopted and began using "Best Western" as a trademark
19 identifying hotel services provided by member hotels affiliated with Best Western. Best
20 Western has continuously and extensively promoted its trade name and trademark in
21 interstate commerce since 1947. As a result of this extensive promotion, the trade name
22 and trademark have become famous among consumers as a source-identifying symbol.

25 17. Since 1959, Best Western has registered with the United States Patent
26 and Trademark Office ("USPTO") various trademarks, service marks, and collective

1 membership marks. On April 14, 1959, the Best Western logo was first registered as a
2 service mark by the USPTO under Registration No. 677,103. Best Western has developed
3 the Best Western Symbols at great expense over the past decades.
4

5 18. Best Western owns the following registrations for the Best Western
6 Symbols and the marks referenced in these registrations:

7 (a) a Best Western logo was registered as a collective membership
8 mark by the USPTO on June 8, 1971, under Registration No. 914,812, which was
9 registered to Western Motels, Inc., but assigned to Best Western International, Inc. in
10 1979, and is still active;
11

12 (b) a Best Western logo was registered as a service mark by the
13 USPTO on June 8, 1971, under Registration No. 914,813, which was registered to Western
14 Motels, Inc., but assigned to Best Western International, Inc. in 1979, and is still active;
15

16 (c) a Best Western logo was registered as a service mark by the
17 USPTO on August 30, 1977, under Registration No. 1,072,360;
18

19 (d) a Best Western logo was registered as a collective membership
20 mark by the USPTO on September 27, 1977, under Registration No. 1,074,300 to Best
21 Western, Inc. and assigned to Best Western International, Inc. in 1979, and is still active;
22

23 (e) the Best Western word mark was registered by the USPTO as a
24 service mark on February 3, 1987, under Registration No. 1,427,735;
25

26 (f) the Best Western word mark was registered by the USPTO as a
collective service mark on March 10, 1987, under Registration No. 1,432,431;

1 (g) the Best Western crown logo design was registered by the
2 USPTO as a service mark on December 6, 1988, under Registration No. 1,515,712;

3 (h) Best Western's current logo was registered by the USPTO as a
4 trademark on June 20, 1995, under Registration No. 1,900,620;

5 (i) Best Western's current logo was registered by the USPTO as a
6 service mark on November 7, 1995, as Registration No. 1,933,830;

7 (j) Best Western's current logo was registered by the USPTO as a
8 service mark on November 25, 1997, as Registration No. 2,116,079;

9 (k) Best Western's current logo was registered by the USPTO as a
10 service mark on October 14, 1997, as Registration No. 2,105,546;

11 (l) Best Western's current logo was registered by the USPTO as a
12 service mark on March 3, 1998, as Registration No. 2,140,332;

13 (m) the Best Western globe and pillow logo design was registered
14 by the USPTO as a service mark on December 24, 2002, as Registration No. 2,665,955;

15 (n) the BEST WESTERN word mark was registered by the
16 USPTO as a service mark on August 3, 2004, under Registration No. 2,869,617;

17 (o) the BESTWESTERN.COM word mark was registered by the
18 USPTO as a service mark on April 19, 2005, under Registration Nos. 3,107,814, 3,080,655
19 and 3,083,667;

20 (p) BW was registered by the USPTO as a service mark on
21 November 29, 2005, under Registration No. 3,020,526; and
22
23
24
25
26

1 (q) Best Western has registered a variety of other designs and
2 phrases as service marks in connection with the trade of hotel and motel lodging, many of
3 which incorporate the words BEST WESTERN.
4

5 19. All of the registrations described above are currently in full force and
6 effect, unrevoked, and uncanceled. Several of the above listed federal registrations for the
7 Best Western word mark and logo have become incontestable under 15 U.S.C. § 1065.
8

9 20. The Best Western Symbols are inherently distinctive and possess
10 strong secondary meaning.

11 21. The Membership Agreement and Governing Documents establish the
12 minimum standard quality assurance and inspection scores that each member must meet in
13 order to achieve and maintain membership. As a result, consumers worldwide associate
14 the Best Western Symbols with high quality in the hotel/motel industry.
15

16 22. A key element of Best Western's branding effort is the display of the
17 Best Western Symbols on the premises of member hotels through signs, publications, and
18 other public displays.
19

20 23. Upon default by a member of certain of its obligations to Best
21 Western, including obligations set forth in the Membership Agreement and Governing
22 Documents, the Best Western Board of Directors ("Board") may terminate the membership
23 and the Best Western License.
24

25 24. Within 15 days following the termination of membership, the former
26 member must cease and desist from using, and remove from public view, all Best Western

1 Symbols and all references to Best Western. The former member is also required to cease
2 and desist from using any item that is similar to the Best Western Symbols in spelling,
3 sound, appearance, or in any other manner. *See* Membership Agreement at ¶ 22.
4

5 **DEFENDANT'S BEST WESTERN MEMBERSHIP**

6 25. On or about September 6, 2006, Defendant Orangeburg Lodging, LLC
7 executed the Membership Agreement attached hereto as Exhibit 1 with Defendant
8 Orangeburg Lodging, LLC designated as the owner of a proposed hotel that was under
9 construction to receive a Best Western membership.
10

11 26. Sometime after execution of the Membership Agreement, Defendant
12 Patel and Rao, LLC was identified as the owner of the hotel that obtained the Best Western
13 membership. *See* Exhibit 1, p. 11.
14

15 27. Pursuant to the Membership Agreement, the Corporate Defendant
16 received a Best Western membership for the hotel formerly known as the Best Western
17 Orangeburg Inn (also known as the Best Western PLUS Orangeburg Inn & Suites), located
18 at 746 Citadel Road, Orangeburg, South Carolina, referenced in Best Western's records as
19 property #41094 (the "Hotel").
20

21 28. On November 9, 2007, Sudhir Patel executed an Application for
22 Change in Voting Member and he identified himself as the Voting Member and owner of
23 the Hotel, which contradicts the information contained in the Membership Agreement. *See*
24 Exhibit 2.
25
26

1 29. On November 9, 2007, Sudhir Patel indicated that he no longer wished
2 to act as the Voting Member for the Hotel's membership and Defendant Hemalata Patel
3 was designated as the new Voting Member, and her affiliation with the Hotel was
4 described as "management company." *Id.*

5
6 30. By accepting the role of Voting Member for the Hotel's membership,
7 Defendant Patel became jointly and severally liable with the Corporate Defendant for all
8 obligations under the Membership Agreement and Governing Documents. *Id.*

9
10 31. Through the Membership Agreement and the Governing Documents,
11 Defendants agreed to timely pay all fees, dues, charges, and assessments imposed
12 generally on the membership by the Board and to promptly pay the costs of all goods or
13 services provided by or ordered through Best Western, including that past due amounts
14 would bear interest at the rate of one and one-half percent (1.5%) per month from the date
15 due until paid.

16
17 32. Among other things, the Membership Agreement grants the Best
18 Western member a limited, non-exclusive Best Western License, thereby allowing the
19 member to use the Best Western Symbols in connection with the Hotel, subject to the
20 terms of the Best Western License, and only for the duration of the Best Western License.

21
22 33. Termination of the Best Western Membership results in termination of
23 the Best Western License, and imposes the obligation to "remove from public view and
24 cease using" all Best Western Symbols and all other references to Best Western within 15
25 days of the date of termination. *See* Membership Agreement at ¶ 22.
26

1 34. Upon termination of the Best Western License, the former member(s)
2 must “actively take steps as may be necessary to cause the cessation of all advertising and
3 distribution of promotional material containing any Best Western Symbol.” *See*
4 Membership Agreement at ¶ 22.
5

6 35. Upon termination of the Best Western License, the former member(s)
7 must not use “anything consisting of or incorporating any one or more words, letters,
8 designs or devices which contain any part of any Best Western Symbol, or which singly or
9 together are similar in spelling, sound, appearance or otherwise to any Best Western
10 Symbol.” *See* Membership Agreement at ¶ 23.
11

12 36. In July 2011, Defendant Patel notified Best Western that Defendants
13 intended to cancel the Best Western membership for the Hotel effective November 30,
14 2011, the last day of Best Western’s fiscal year.
15

16 37. On July 26, 2011, Best Western wrote to Defendant Patel and
17 acknowledged that the Best Western membership would terminate effective November 30,
18 2011 as requested by Defendants. *See* Exhibit 3.
19

20 38. In the July 26, 2011 letter, Best Western also notified Defendant Patel
21 that, in light of the membership termination on November 30, 2011, Defendants were
22 obligated to remove all Best Western Symbols from the property on or before December
23 15, 2011, in accordance with applicable provisions of the Membership Agreement and
24 Governing Documents. *Id.*
25
26

1 39. In the July 26, 2011 letter, Best Western notified Defendants that, on
2 or before December 15, 2011, Defendants were obligated to remove all references to the
3 Hotel as a Best Western member, regardless of where the references are or what kind of
4 media, including in all advertising, white and yellow pages, amenities, hotel and travel
5 guides and directories, websites, etc. *Id.*

7 40. In the July 26, 2011 letter, Best Western notified Defendant Patel that
8 she was required to contact Best Western as soon as possible after termination to make
9 arrangements to satisfy any remaining balance owed on the Best Western account
10 maintained for the Hotel.

12 41. On April 20, 2012, Best Western notified Defendant Patel that
13 Defendants had failed to pay the outstanding balance owed on the open account Best
14 Western maintained for the Hotel and failed to remove all listings of the Hotel as a Best
15 Western member on websites advertising the Hotel. *See* Exhibit 4.

17 42. As of the April 20, 2012 letter, Defendants owed \$28,974.39 on the
18 open account. *Id.*

19 43. Defendants failed to pay the open account balance owed to Best
20 Western, as requested in the April 20, 2012 demand letter.

22 44. Numerous travel-related websites continued to advertise the Hotel as a
23 Best Western member property as late as August 9, 2012 and August 17, 2012, despite that
24 the membership terminated effective November 30, 2011. *See* Exhibit 5.

1 45. The internet advertisements violate the terms of the Membership
2 Agreement and Governing Documents and to the extent they use the Best Western
3 Symbols, including the "Best Western" word mark, are infringing on Best Western's
4 Symbols.
5

6 46. As of September 1, 2012, Defendants owed Best Western no less than
7 \$32,116.30 on the open account that Defendants had while a Best Western member, which
8 represents certain fees and other charges imposed on the Hotel as a Best Western member.
9 See Invoices dated November 1, 2011 to September 1, 2012, attached hereto as Exhibit 6.
10

11 47. Best Western fully performed all of its obligations under the
12 Membership Agreement.
13

14 48. Defendants have refused and continue to refuse to pay to Best Western
15 the amounts due and owing to it on their delinquent open and stated account under the
16 express terms of the Membership Agreement.

17 49. Defendants have refused and continue to refuse to pay to Best Western
18 the amounts due and owing to it for the liquidated damages owed under the express terms
19 of the Membership Agreement because of their continued use of Best Western Symbols,
20 including the "Best Western" trade name, on internet advertisements.
21

22 50. Defendants have refused and continue to refuse to actively take steps
23 as may be necessary to cause the cessation of all advertising and distribution of
24 promotional material containing any Best Western Symbol.
25
26

1 51. Defendants' continued use of Best Western Symbols in
2 advertisements for the Hotel has the result of potentially diverting travelers from nearby
3 Best Western members to the Hotel, thereby irreparably injuring Best Western and its
4 members.
5

6 **COUNT I – BREACH OF CONTRACT**

7 52. Best Western incorporates by reference the allegations contained in
8 paragraphs 1 through 51 above as though fully set forth herein.
9

10 53. Defendants have refused and continue to refuse to pay to Best Western
11 the amounts due and owing as required by the Membership Agreement.

12 54. Pursuant to the express terms of the Membership Agreement, interest
13 has accrued and continues to accrue on the unpaid amounts at the rate of one and one-half
14 percent (1.5%) per month.
15

16 55. As of September 1, 2012, there remains due and owing, by Defendants
17 to Best Western, the sum of no less than \$32,116.36.

18 56. To the extent Defendant Orangeburg Lodging, LLC actually
19 transferred its rights and obligations under the Membership Agreement to Defendant Patel
20 and Rao, LLC, and such transfer was not authorized by Best Western, Defendant
21 Orangeburg Lodging, LLC breached the Membership Agreement and Governing
22 Documents.
23

24
25 ///

26 ///

1 57. Pursuant to ¶ 36 of the Membership Agreement, and A.R.S. §§ 12-341
2 and 12-341.01, Best Western is entitled to recover the attorneys' fees and costs incurred in
3 pursuing this action.
4

5 **COUNT II – OPEN ACCOUNT**

6 58. Best Western incorporates by reference the allegations contained in
7 paragraphs 1 through 57 above as though fully set forth herein.
8

9 59. Best Western rendered services and provided supplies on an open
10 account, and Defendants agreed to pay for such services and supplies on an open account
11 and to pay for such services and supplies when due in accordance with the Membership
12 Agreement.
13

14 60. Defendants have failed to pay for the services and supplies that Best
15 Western has provided. As of September 1, 2012, there remains due and owing, by
16 Defendants to Best Western, the sum of no less than \$32,116.36.
17

18 61. Pursuant to the express terms of the Membership Agreement, interest
19 has accrued and continues to accrue on this sum at the rate of one and one-half percent
20 (1.5%) per month until paid in full.
21

22 62. Pursuant to ¶ 36 of the Membership Agreement, and A.R.S. §§ 12-341
23 and 12-341.01, Best Western is entitled to recover the attorneys' fees and costs incurred in
24 pursuing this action.
25

26 ///

///

**COUNT III – BREACH OF CONTRACT; POST TERMINATION USE OF
TRADEMARKS**

63. Best Western incorporates by reference the allegations contained in paragraphs 1 through 62 as though fully set forth herein.

64. Pursuant to the express terms of the Membership Agreement, Defendants were obligated to remove from public view, and to cease all use of, the Best Western Symbols in connection with the Hotel within fifteen (15) days after termination. This prohibition includes making any representation, whether direct or indirect, indicating that the Hotel property is affiliated with Best Western.

65. Internet advertisements for the Hotel after the membership terminated refer to the Hotel as the “Best Western Orangeburg Inn” or the “Best Western Orangeburg Inn & Suites” or as a “Former[] Best Western,” thereby unlawfully using the Best Western Symbols to advertise the Hotel, and in violation of the License, Membership Agreement and Governing Documents.

66. Paragraph 24 of the Membership Agreement provides for liquidated damages where, as here, a former member continues to use the Best Western Symbols in connection with the hotel properties for more than fifteen (15) days following the termination of their Best Western membership and the Best Western License. The amount of liquidated damages is equal to fifteen percent (15%) of the mean of the hotel property’s room rates per day, multiplied by the total number of rooms for every day that a former member continues to use the Best Western Symbols beyond the fifteen-day period.

1 67. Beginning December 16, 2011, Defendants owe \$888.34 per day for
2 each day they are unlawfully using the Best Western Symbols at the Hotel.

3 68. The liquidated damages calculations are based on the hotel property's
4 information regarding daily rates and total number of rooms. A copy of the Marketing
5 Statistics Report showing the Average Daily Rates (ADR) for the hotel property and the
6 Best Western Account Information Computer Screen, showing the number of units for the
7 hotel, are attached as Exhibit 7.
8

9 69. Pursuant to ¶ 36 of the Membership Agreement, and A.R.S. § 12-
10 341.01, Best Western is entitled to recover all attorneys' fees and costs incurred in this
11 action.
12

13 **COUNT IV – FEDERAL TRADEMARK INFRINGEMENT**
14 **(15 U.S.C. § 1114(1))**

15 70. Best Western incorporates by reference the allegations contained in
16 paragraphs 1 through 69 as though fully set forth herein.
17

18 71. Defendants have failed to cease and desist from the use of the
19 federally registered Best Western Symbols in connection with advertisements for the
20 Hotel.
21

22 72. Defendants' actions complained of have at all times been without Best
23 Western's consent, and their acts constitute infringement of the federally registered Best
24 Western Symbols in violation of 15 U.S.C. § 1114(1).
25
26

1 73. Defendants' acts complained of have damaged Best Western
2 irreparably, and monetary damages will not afford full and adequate relief for all of Best
3 Western's injuries resulting from Defendants' conduct. Such injuries include harm to Best
4 Western's goodwill and reputation in the marketplace that money cannot sufficiently
5 compensate.
6

7 74. Best Western is, therefore, requesting and entitled to a preliminary and
8 permanent injunction restraining and enjoining defendants and their respective officers,
9 members, agents, servants, employees, and any other persons or entities acting on behalf of
10 or in concert with Defendants, from using the Best Western Symbols or any colorable
11 imitation thereof, in connection with the promotion, advertisement, and sale of goods and
12 services without Best Western's authorization, pursuant to 15 U.S.C. § 1116.
13
14

15 75. Defendants' infringement is willful, and Best Western is entitled to
16 recover all damages sustained as a result of the unlawful conduct, including three times
17 Defendants' profits and Best Western's damages, as well as the costs of this suit and
18 attorneys' fees, pursuant to 15 U.S.C. § 1117.
19

20 **COUNT V – FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION**
21 **(15 U.S.C. § 1125(a))**

22 76. Best Western incorporates by reference the allegations contained in
23 paragraphs 1 through 75 above as though fully set forth herein.

24 77. Defendants have failed to cease and desist from the use of the
25 federally registered Best Western Symbols in connection with advertisements for the Hotel
26

1 after the membership terminated.

2 78. The unauthorized use of the Best Western Symbols is likely to cause
3 the public to believe, erroneously, that the non-member Hotel and associated services are
4 sponsored by, endorsed by, or associated with Best Western.
5

6 79. Defendants' operation and competition with Best Western through
7 infringement of the federally registered Best Western Symbols in connection with the
8 Hotel constitutes a false designation of origin and unfair competition under 15 U.S.C. §
9 1125(a).
10

11 80. Defendants have caused Best Western to suffer immediate,
12 irreparable, and continuous loss, including injury to its goodwill and reputation.
13

14 81. Upon information and belief, Defendants have undertaken the acts
15 complained of herein willfully and with the intent to cause confusion, mistake, and
16 deception on the part of the public.

17 82. If Defendants are using the Best Western Symbols unlawfully, unless
18 restrained by this Court, they will continue to commit the foregoing acts of unfair
19 competition.
20

21 83. Defendants' acts complained of have damaged Best Western
22 irreparably. Monetary damages will not afford full and adequate relief for all of Best
23 Western's injuries resulting from Defendants' conduct. Such injuries include harm to Best
24 Western's goodwill and reputation in the marketplace that money cannot sufficiently
25 compensate.
26

1 84. Best Western is, therefore, requesting and entitled to a preliminary and
2 permanent injunction restraining and enjoining Defendants and their respective officers,
3 members, agents, servants, employees, and any other persons or entities acting on behalf of
4 or in concert with Defendants, from using the Best Western Symbols or any colorable
5 imitation thereof, in connection with the promotion, advertisement, and sale of goods and
6 services without Best Western's authorization, pursuant to 15 U.S.C. § 1116.
7

8 85. Defendants' acts of unfair competition are willful and entitle Best
9 Western to recover damages, attorneys' fees, and costs pursuant to 15 U.S.C. § 1117.
10

11 **COUNT VI – FEDERAL TRADEMARK DILUTION – (15 U.S.C. § 1125(c))**

12 86. Best Western incorporates by reference the allegations contained in
13 paragraphs 1 through 85 above as though fully set forth herein.
14

15 87. Best Western has advertised and publicized the Best Western Symbols
16 extensively for decades throughout the United States, including the State of Arizona. As a
17 result of their inherent distinctiveness and extraordinarily widespread use, the Best
18 Western Symbols have acquired a high degree of recognition and fame for hotel services.
19

20 88. Defendants' unauthorized, post-termination use of the words "Best
21 Western" on advertisements and other Best Western Symbols are used for commerce and
22 began long after Best Western's Symbols had already become famous throughout the
23 United States, including the State of Arizona.
24

25 89. Defendants' unauthorized, post-termination use of the "Best Western"
26 word mark and other Best Western Symbols are the same as or a variation of the Best

1 Western Symbols and such use is likely to cause dilution of the distinctive quality of the
2 Best Western Symbols.

3 90. Myriad internet hotel advertising sites continue to falsely refer to the
4 Hotel as a Best Western member.

5 91. Upon information and belief, Defendants have committed the acts
6 complained of herein willfully and with the intent to trade on Best Western's reputation
7 and/or to cause dilution of Best Western's famous Symbols.
8

9 92. Defendants' acts complained of have damaged Best Western
10 irreparably. Monetary damages will not afford full and adequate relief for all of Best
11 Western's injuries resulting from Defendants' conduct. Such injuries include harm to Best
12 Western's goodwill and reputation in the marketplace that money cannot sufficiently
13 compensate. Best Western is, therefore, requesting and entitled to a preliminary and
14 permanent injunction restraining and enjoining Defendants and their respective officers,
15 members, agents, servants, employees, and any other persons or entities acting on behalf of
16 or in concert with Defendants, from using the Best Western Symbols or any colorable
17 imitation thereof, in connection with the promotion, advertisement, and sale of goods and
18 services without Best Western's authorization, pursuant to 15 U.S.C. § 1116.
19
20
21

22 93. Defendants' acts of unfair competition are willful and entitle Best
23 Western to recover damages, attorneys' fees, and costs pursuant to 15 U.S.C. § 1117.
24

25 ///

26 ///

COUNT VII – UNFAIR COMPETITION – ARIZONA LAW

94. Best Western incorporates by reference the allegations contained in paragraphs 1 through 93 above as though fully set forth herein.

95. Defendants' acts complained of herein constitute unfair competition under the laws of the State of Arizona.

96. Defendants have failed to cease and desist from the use of the federally registered Best Western Symbols in connection with advertisements for the Hotel after the membership terminated.

97. Defendants' continued use of the Symbols on the false and misleading websites is likely to divert customers who call the Hotel looking for a Best Western member property to book a reservation at the Hotel instead of actual Best Western member properties.

98. Defendants have been unjustly enriched and have damaged Best Western's business, reputation, and goodwill.

99. Upon information and belief, Defendants' acts complained of herein were intentional, wanton, willful, guided by an evil hand and mind, and committed in bad faith and with the intent to confuse and deceive the public.

100. Defendants' acts complained of herein have caused Best Western irreparable harm for which there is no adequate remedy at law.

1 **COUNT VIII – TRADEMARK DILUTION UNDER ARIZONA LAW -**
2 **(A.R.S. § 44-1448.01)**

3 101. Best Western incorporates by reference the allegations contained in
4 paragraphs 1 through 100 above as though fully set forth herein.

5 102. The Best Western Symbols are famous within the State of Arizona,
6 and became famous in Arizona long before Defendants began using the marks.

7 103. Defendants' acts complained of herein constitute commercial use of a
8 mark or trade name that is likely to cause dilution of the distinctive quality of the famous
9 Best Western Symbols.
10

11 104. Defendants have undertaken these acts willfully and with the intent to
12 trade on Best Western's reputation or to cause dilution of the Best Western Symbols.

13 105. Defendants' acts complained of herein caused, or are likely to cause,
14 dilution to the famous Best Western Symbols in violation of A.R.S. § 44-1448.01.
15

16 106. Defendants' acts complained of herein have caused irreparable harm
17 and injury to Best Western's famous Best Western Symbols, business reputation, and
18 goodwill for which there is no adequate remedy at law.
19

20 **COUNT IX – COMMON LAW TRADEMARK INFRINGEMENT**

21 107. Best Western incorporates by reference the allegations contained in
22 paragraphs 1 through 106 above as though fully set forth herein.
23
24
25
26

1 108. Best Western has common law rights in the Best Western Symbols
2 through the use of the marks in commerce, such rights existing long before any use of the
3 marks by Defendants.

4 109. Defendants' acts complained of herein constitute common law
5 infringement of the Best Western Symbols.

6 110. Upon information and belief, Defendants have undertaken these acts
7 willfully and with the intent to trade on Best Western's reputation and to cause confusion,
8 mistake, and deception on the public.

9 111. Defendants' acts complained of herein have caused irreparable harm
10 and injury to Best Western's famous Best Western Symbols, business reputation, and
11 goodwill for which there is no adequate remedy at law.

12 **COUNT X – STATED ACCOUNT**

13 112. Best Western incorporates by reference the allegations contained in
14 paragraphs 1 through 111 above as though fully set forth herein.

15 113. A full, just, and true accounting was made and stated between Best
16 Western and Defendants on a monthly basis, with no objections being made to any item or
17 items thereof by Defendants.

18 114. After allowing all just and lawful offsets, payments, and credits, the
19 unpaid balance and reasonable value of the services provided to Defendants and the costs
20 advanced on behalf of Defendants by Best Western as of September 1, 2012 is the sum of
21

1 \$32,116.36, representing certain fees and other charges imposed on Defendant as a Best
2 Western member, and Defendants are indebted to Best Western in such an amount.

3 115. True and correct copies of the billing invoices (dated November 1,
4 2011 to September 1, 2012) issued to Defendants by Best Western, reflecting the date of
5 invoices for services rendered and any payments or credits, and the balances due on each
6 invoice by Defendants, are attached as Exhibit 6 hereto.

7
8 116. The amount owed to Best Western by Defendants, as reflected on
9 each monthly billing statement of Best Western, is a liquidated sum and Best Western is
10 entitled to pre- and post-judgment interest on those sums at the highest rate allowed by law
11 until paid in full.

12
13 117. Pursuant to the Membership Agreement, and A.R.S. §§ 12-341 and
14 12-341.01, Best Western is entitled to recover the attorneys' fees and costs incurred in
15 pursuing this action.

16
17 **COUNT XI – UNJUST ENRICHMENT**

18 118. Best Western incorporates by reference the allegations contained in
19 paragraphs 1 through 117 above as though fully set forth herein.

20
21 119. Best Western provided Defendants with goods, services, and supplies
22 while expecting to be compensated in return.

23 120. Defendants knew of Best Western's expectation, and accepted and
24 benefited from the goods, services, and supplies that Best Western provided to them and to
25 the Hotel.
26

1 121. It is inequitable and unconscionable for Defendants to have enjoyed
2 the benefit of Best Western's actions without compensating Best Western, and Defendants
3 have been, and continue to be, unjustly enriched to Best Western's detriment.
4

5 **COUNT XII – BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND**
6 **FAIR DEALING**

7 122. Best Western incorporates by reference the allegations contained in
8 paragraphs 1 through 121 above as though fully set forth herein.

9 123. In breaching the Membership Agreement by, among other things,
10 failing to pay the amount owed on the account balance, failing to cease and desist use of
11 Best Western's Symbols, and purportedly transferring ownership of the Hotel or rights and
12 obligations under the Membership Agreement, Defendants have acted in bad faith to the
13 detriment of Best Western and its business.
14

15 124. Defendants' acts in bad faith constitute material breaches of the
16 implied covenant that they would act in good faith and deal fairly with Best Western, with
17 whom they had a contractual relationship and to whom they owed the duty of good faith
18 and fair dealing.
19

20 125. As a proximate result of Defendants' breach of the implied covenant
21 of good faith and fair dealing, Best Western has suffered and continues to suffer damage.
22

23 126. Defendants' bad faith actions in breach of the implied covenant of
24 good faith and fair dealing were willful and wanton and in reckless disregard for Best
25 Western's rights, entitling Best Western to punitive damages.
26

1 127. Pursuant to ¶ 36 of the Membership Agreement, and A.R.S. §§ 12-341
2 and 12-341.01, Best Western is entitled to recover the attorneys' fees and costs incurred in
3 pursuing this action.
4

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Best Western International, Inc. seeks judgment against
7 Defendants, jointly and severally, as follows:

8 A. With respect to Counts I, II, X, XI and XII:

9 The total of unpaid fees, which as of September 1, 2012, totals no less than
10 \$32,116.36, including interest at the rate of one and one-half percent (1.5%) per month
11 until paid in full.
12

13 B. With respect to Count III:

14 1. Liquidated damages for breach of the Best Western Agreement in an
15 amount equal to fifteen percent (15%) of the mean of the Hotel's room rates per day
16 multiplied by the total number of rooms beginning December 16, 2011 until Defendants
17 cease and desist from the unlawful and unauthorized use of the Best Western Symbols.
18

19 2. Beginning December 16, 2011, Defendants owe \$888.34 per day for
20 each day the Best Western Symbols are unlawfully used.
21

22 C. With respect to Counts IV, V, VI and VII:

23 An award of treble damages against Defendants pursuant to 15 U.S.C. §
24 1117(b) or, alternatively, an award of liquidated damages to Best Western against
25
26

1 Defendants calculated in the manner provided for in ¶ 24 of the Membership Agreement,
2 whichever is greater.

3 D. With respect to all Counts:

4
5 1. Injunctive relief enjoining Defendants and their respective officers,
6 members, agents, servants, and employees, and any other persons and entities acting on
7 behalf of or in concert with Defendants, to immediately and permanently remove all Best
8 Western Symbols as used in reference to the Hotel including (without limitation) any
9 advertisements bearing any of the Best Western Symbols.
10

11 2. Injunctive relief ordering Defendants to cause the removal of all Best
12 Western Symbols from advertisements relating to the Hotel, and reimbursement of costs
13 incurred by Best Western to cause the removal of the same should Defendants fail to do so
14 (in addition to whatever penalties the Court may impose upon Defendants for failing to
15 comply with the Court's order to remove any infringing advertisements relating to the
16 Hotel) within ten (10) days of the injunction.
17

18 3. Attorneys' fees and costs incurred herein against Defendants pursuant
19 to the Membership Agreement, A.R.S. §§ 12-341 and 12-341.01, and/or 15 U.S.C. §
20 1117(a) (or any other applicable law).
21

22 4. An award to Best Western of its damages in an amount to be proven at
23 trial.
24

25 5. As allowed by law, an award of special exemplary and/or punitive
26 damages in an amount to be determined at trial.

1 6. For such other and further relief as the Court deems just and proper in
2 the circumstances.

3 Dated this 23rd day of August, 2012.

4 SCHNEIDER & ONOFRY, P.C.

5
6 By s/Michelle Swann

7 Michelle H. Swann

8 Talia J. Offord

9 3101 N. Central Avenue, Suite 600

10 Phoenix, Arizona 85012-2658

11 Attorneys for Plaintiff
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VERIFICATION

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

I, Cheryl Pollack, state as follows:

I am Director of Member Care and Development Administration of Best Western International, Inc. ("Best Western"). I am authorized by Best Western to execute this Verification. I am over the age of 18 and a resident of Maricopa County, Arizona. I have read the foregoing Verified Complaint and know its contents. The information contained in the foregoing Verified Complaint is true and correct to the best of my knowledge and belief.

Cheryl Pollack
Cheryl Pollack

The foregoing instrument was acknowledged before me this 21st day of August, 2012, by Cheryl Pollack.

Loretta Henneman
Notary Public

My Commission Expires: 6-24-2014



INDEX TO EXHIBITS

**PLAINTIFF BEST WESTERN INTERNATIONAL, INC.'S COMPLAINT
AGAINST DEFENDANTS PATEL AND RAO, LLC, ORANGEBURG LODGING,
LLC AND HEMALATA PATEL**

Exhibit 1 – Best Western's Membership Application and Agreement

Exhibit 2 – Application for Change in Voting Member dated November 9, 2007

Exhibit 3 – Confirmation of Termination Letter to Hemalata Patel dated July 26, 2011

Exhibit 4 – Demand Letter to Sudhir D. Patel and Hemalata Patel dated April 20, 2012

Exhibit 5 – Printouts from Travel Related Websites

Exhibit 6 – Best Western's Invoices dated November 1, 2011 through September 1, 2012

Exhibit 7 – Marketing Statistics Report and Best Western Account Information
Computer Screen